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REMARKS

Claim 1, as well as claims 2 – 7, and 10 dependent thereon, and claim 11, as well as claims 12 – 15, and 18 dependent thereon, have been amended to include a ready to eat vegetable yogurt and method of manufacturing same, having a pureed vegetable content ranging from 40 to 60 percent by weight. In addition, claim 1, as well as claims 2 – 7, and 10 dependent thereon, has been amended to further require that the vegetables are cooled before they are pureed, so that the cooked pureed vegetables are cool at time of blending, and are homogeneously blended with the plain yogurt. Inasmuch as the limitation of original claims 9 and 17 has been incorporated into currently amended claims 1 and 11, respectively, claims 9 and 17 have been canceled. The amendments to claims 1 and 11, as well as claims 2 – 7, and 10 and 12 – 15, and 18 dependent thereon, respectively, are clearly supported by the original specification, particularly at: page 13, lines 14 – 15; page 14, lines 3 – 8; and page 15, line 15.

The ready to eat vegetable yogurt required by applicant's present claims comprises cooked pureed cooled vegetables blended with plain yogurt and natural additives to enhance flavor and taste. Cooling of the vegetables before pureeing is further required by applicant's present claims so that (i) the vegetables' nutritional properties and taste are not compromised due to overcooking, (ii) addition of the vegetables to the yogurt is readily accomplished with little, if any, reaction between the vegetables and yogurt. Applicant's present claims 1 – 7, 10, 11 – 15 and 18 require that the cooked pureed vegetables range from 40 to 60 percent by weight. The weight percent required by applicant's present claims provides a vegetable yogurt having a significant weight percentage of vegetables without the presentation of preservatives or other non-natural additives, thereby yielding a highly nutritional food packed with essential vitamins,

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minerals, and fibers inherent in the vegetable utilized.

The Examiner has rejected claims 1 – 7, 9 – 15, 17, and 18 under 35 U.S.C. §103(a) as being unpatentable over Japanese Patent No. 61231958 to Hara, Japanese Patent No. 55007013 to Kazutada et al., Japanese Patent No. 3112454 to Masahiro et al., and Great Britain Patent No. 2294625 to Oliver. The Examiner has stated that Applicant's amendment to the claims in the Response filed January 11, 2006 are not seen to influence the conclusion of un-patentability previously set forth in Examiner's Office Action dated September 9, 2005. Again, the Examiner has stated that Hara, Kazutada et al., Masahiro et al., and Oliver disclose a yogurt comprising vegetable. (Hara, abstract; Kazutada et al., abstract; Masahiro et al., abstract; Oliver, abstract). The Examiner has further stated that the [applicant's] claims differ as to the recitation of specific cultures and percents. As to specific yogurt cultures, the Examiner has stated that the specific culture required by applicant's claims is notoriously well-known in the art and used for its art-recognized purpose. As to the percents of vegetable to yogurt claimed by Applicant, the Examiner has stated that, in the absence of showing to the contrary, the amounts claimed are seen to be no more than a matter of choice, dictated by preference, and well-within the skill of the art.

The Examiner has stated that it would have been obvious to a person of ordinary skill in the art, at the time the invention was made, to use conventional yogurt cultures and the claimed percents in that of Hara, Kazutada et al., Masahiro et al., or Oliver because the use of conventional cultures and preferred amounts is well-within the skill of the art. The Examiner further concluded that once the art has recognized the addition of vegetable products to yogurt, the use and manipulation of types of vegetables and percents employed is merely a matter of

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choice and well-within the skill of the art. Applicant respectfully disagrees with the Examiner.

In addition, the Examiner has stated that applicant's arguments filed January 11, 2006 have been fully considered but are not persuasive in as much as applicant argued that the prior art does not teach a cooked pureed vegetable content ranging from 40 to 60 percent by weight. The Examiner stated that percents are a matter of choice, and furthermore, that Oliver teaches the addition of 9 to 31 weight percent of flavoring (Oliver, page 1), and that Oliver also teaches that the weight percent may vary as taste demands. However, applicant respectfully disagrees with the Examiner, both on the grounds that the weight percent of vegetables is not merely a matter of choice, and on the grounds that Oliver does not teach the addition of 9 to 31 weight percent of vegetable flavoring.

Applicant respectfully submits that Oliver discloses a yogurt comprising rosaceous fruit, preferably one or more of apple, pear, plum and / or damson, and in particular cooking applies such as Bramley, in a concentration of preferably 9 to 31 weight percent. (Oliver, page 2, paragraph 1). Oliver teaches a weight percent of the vegetables (savory flavoring) to be within the range of 12 to 20 weight percent, and in particular 16 weight percent. (Oliver, page 2, paragraph 6; and Oliver, page 3, last line into page 4, paragraph 1). The object of Oliver is to set forth a vegetable type yogurt including the incorporation of rosaceous fruit to act as preservatives for the yogurt food product. In fact, Oliver tends to teach away from a greater weight percent of vegetables, as Oliver teaches that the rosaceous fruit acts as a stabilizing agent having a stabilizing effect on the savory flavoring. (Oliver, page 2, paragraph 3). The product taught by Oliver provides a 12 to 20 weight percent range for the addition of the vegetable, which is negligible in nutritional value as compared to the 40 to 60 weight percent required by

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applicant's present claims.

The weight percent of cooked pureed vegetables required by applicant's present claims 1
~ 18 is not merely a matter of choice, dictated by preference, but acts to provide an all natural vegetable yogurt product having significant nutritional value; such an all natural nutrient enriched food product has not been accomplished by any of the prior art workers including Hara, Kazutada et al., Masahiro et al., or Oliver. For quite some time the art has struggled to devise an all natural food product combining vegetables with yogurt wherein a significant amount of vegetables are blended with the yogurt with minimal breakdown or depletion of the nutritional properties of the vegetable; yet, up until the time of applicant's invention, no all-natural, ready to eat vegetable yogurt product having cooked pureed vegetables ranging from 40 to 60 percent by weight capable of minimizing nutritional degradation of the nutritional properties of the vegetable has been proposed. The prior art inventions and their attendant disadvantages are discussed at pages 1 – 12 of applicant's specification.

In contrast to the ready-to-eat, vegetable yogurt product disclosed by applicant and defined by applicant's claims, prior art workers, including Hara, Kazutada et al., Masahiro et al., and Oliver, have taught that the combination of yogurts with vegetables produces a food product wherein the vegetables flavor degrades. Such degradation is said to inherently result from degradation of the vegetable. It causes a marked decrease in nutritional values, and yields a commercially unattractive product. (see, for example, Oliver, pg. 1, second paragraph).

Hara discloses a process for utilizing fermented bean past (MISO) and / or fermented milk product, such as yogurt (NYUFU) as an agent to retard the freeze-denaturation of a food product. In particular, Hara discloses that MISO and / or NYUFU is to be mixed with a food

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product, such as cereal, potato, cake, bean, fish, shellfish, meat, egg, vegetable, seasoning, cooked food, algae, etc., of the normal state. Hara discloses that 100 pts. food product is mixed with at least 3 pts. of MISO and/ or NYUFU; this pts ratio would result in a pasta-like food product, not a ready to eat vegetable yogurt. Moreover, Hara discloses that when a seasoning, such as sugar, oil and fat, or the like, is added to the food product, a mixture of at least 1 pt. of MISO or NYUFU. The small amount of MISO or NYUFU added by Hara acts as an agent to retard the freeze-denaturation of the food product. The product produced in light of the Hara disclosure is not a ready to eat yogurt product, but is merely a food product appointed for exposure to freezing conditions, since the objective of the agent addition in Hara is to retard freeze-denaturation (which typically occurs during the thawing process after a food product undergoes freezing). The size of Hara's food product to MISO or NYUFU ratio yields a food product that is basically a vegetable with a small amount of MISO or NYUFU in order to act as an agent to retard effects of freeze-denaturation on the food product, while at the same time preserving the taste of original unfrozen food by freezing and thawing the raw material. The food product yielded from the teachings of Hara is not a ready to eat vegetable yogurt having 40 to 60 weight percent of cold pureed cooked vegetables, as is required by applicant's present claims 1 - 18.

Kazutada et al. discloses a process wherein finely cut or ground vegetables, extracts, juices, heated or cooked vegetables are added to yogurt before or after the fermentation. The purpose of the process in Kazutada et al. is to prepare a yogurt containing vegetables having softened fermentation odor and improved flavor, by adding vegetables to the yogurt during the preparation step. (Kazutada et al., abstract). The object of the process is to prepare a yogurt containing

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vegetables that has softened fermentation odor and improved flavor. Such a yogurt is said to be obtainable by adding vegetables to the yogurt during the preparation step. The vegetables in Kazutada et al. are added to one or both layers of yogurt and a jelly is prepared using a gelatinizing agent. Vegetable fermentation, as required by the Kazutada et al. process, results in a food product that exhibits properties significantly different from a food product that does not involve vegetable fermentation. Fermentation of the vegetables causes a chemical change therein -- an enzymatic transformation of organic substrates. This chemical change decreases the nutritional properties of the vegetable. Kazutada et al. discloses the addition of vegetables to yogurt during or prior to fermentation. In addition, Kazutada et al. requires the addition of a gelatinizing agent, presumably to prevent separation of the yogurt vegetable mixture. Kazutada et al. does not disclose or suggest a ready to eat vegetable food product having 40 to 60 weight percent of cold pureed vegetables added to a yogurt (soy or milk) as is required by applicant's present claims 1 - 18.

Accordingly, reconsideration of the rejection of claims 1 - 18 under 35 USC §103(a) as being unpatentable over Kazutada et al. is respectfully requested

Masahiro et al. discloses a process for formulating a vegetable food product comprising the mixing of vegetables, yogurt and a gelling agent. The Masahiro et al. process provides that the gelling agent may be carrageenan, agar, gelatin, gellan gum, pectin, canthan gum or a mixture thereof. The purpose of the Masahiro et al. invention is to suppress the grassy smell of vegetables and improve the taste and flavor by mixing vegetables, yogurt and a gelling agent. Masahiro et al. does not teach or suggest a ready to eat vegetable food product having 40 to 60 weight percent of cold pureed vegetables added to a yogurt (soy or milk) as is required by applicant's claims 1 - 18. Accordingly, reconsideration of the rejection of present claims 1 - 18 under 35 USC §103(a) as

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being unpatentable over Masahiro et al. is respectfully requested.

The addition of a sizeable weight percentage of pureed vegetables, as called for by applicant's present claims 1 – 18, is carried out under cold conditions (i.e. the pureed, cooked vegetables are cold at time of blending) so that degradation of the vegetable's nutrients is minimized. The addition of cold pureed vegetables to a yogurt is not taught or suggested by the prior art workers, including Hara, Kazutada et al., Masahiro et al., or Oliver. Moreover, the addition of cold pureed vegetables in amounts ranging between 40 to 60 weight percent is not disclosed or suggested by any prior art worker, including Hara, Kazutada et al., Masahiro et al., or Oliver. Rather, the prior art teachings, including Hara, Kazutada et al., Masahiro et al., or Oliver suggest that preservatives and the like (rosaceous fruit; jellies; etc.) must be added to vegetable yogurt preparations in order to stabilize the flavoring. None of the prior art references, including Hara, Kazutada et al., Masahiro et al., or Oliver teach a ready to eat vegetable yogurt that utilizes as high as 40 to 60 weight percent of cold vegetables without the addition of preservatives and the like. Clearly, such a sizeable addition of cold pureed vegetable is not merely a matter of choice. Rather the amount of cold pureed vegetable required by applicant's claims 1-18 constitutes a critical feature that preserves the nutritional value of the vegetable yogurt food product, while at the same time resulting in a food product that is nutritionally stable and viable.

Accordingly, reconsideration of the rejection of claims 1 – 18 under 35 USC §103(a) as being unpatentable over Hara, Kazutada et al., Masahiro et al., or Oliver is respectfully requested.

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CONCLUSION

In view of the amendments to the claims and the remarks set forth above, it is respectfully submitted that the present application is in allowable condition. Reconsideration of the Final Rejection, entry of this amendment, and the allowance of present claims 1 – 18 are earnestly solicited.

Respectfully submitted,
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